

July 29. 1766.

CONDESCENDENCE

FOR

John Brown Merchant in *Edinburgh*;

AGAINST

Mrs Anne and Mary Sellers.

UPON advising the petition of Mr Brown, reclaiming against an interlocutor of Lord Auchinleck's, together with answers for Anne and Mary Sellers, on the 25th instant, your Lordships, before answer, were pleased to "ordain the petitioner, against Tuesday next, to give in a condescendence of the practice, with respect to the renewal of brewing-utensils when wore out; and the tack is in the same terms with that which gives rise to the present question."

The petitioner has made all possible enquiry during the few days allowed; and the result of it is, that, in the sets and tacks of most of the breweries in and about Edinburgh, there is no obligation laid upon the tenants to uphold the brewing-loom; and consequently the same are not only renewed when wore out, but upheld and repaired by the master: And, amongst the tacks which the petitioner got access to see, there were none in the precise terms with the one in question, *that is to say*, which obliged the tenant to uphold the whole utensils. The petitioner, indeed, found one tack, where the tenant was bound expressly, not only to uphold, but to *replace* or *renew* the utensils when wore out, which shows the apprehension of the parties to have been, that it was necessary to have an express clause as to *renewing* or *replacing*, in order to lay that obligation upon the tenant.

The petitioner found two other tacks, where the obligation upon the tenant, as to upholding, was restricted to the hair-cloth in the one, and to the hair-cloth and pump in the other. The one of these tacks, which laid the obligation of upholding the hair-cloth alone upon the tenant, was given up soon after being entered into; and before the hair-cloth was wore out; and the other tack was granted in the 1747, by Thomas Cleghorn to Bartholomew and Hugh Bells for thirteen years; so that it is also expired. Mr Cleghorn was thereby bound to uphold the brewerie and utensils, "excepting the hair-cloth and pump, which are to be upheld by the said Bartholomew and Hugh Bells on their own charges." The petitioner is informed, that the said hair cloth and pump were accordingly repaired by the Messrs Bells, so long as they could be upheld in that way; but that the hair-cloth having been wore out during the tack, the same was renewed or replaced by the proprietor. Mr Hugh Bell, the survivor of these tacksmen, happens to be presently at London; but your Lordships will observe, that he was one of the arbiters named by the respondents, in the submission between them and the petitioner, relative to the tack in question; and that he was of opinion, that the obligation to renew the utensils when wore out lay upon the respondents, and not upon the tacksmen.

Condescendence
John Brown
Mrs Anne & Mary
Sellers

60